



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29337656

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a skydiving instructor, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor would have national importance or that, on balance, it would benefit the United States to waive the job offer requirement. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act,¹ as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. *Id.*

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act.

Neither the statute nor the pertinent regulations define the term “national interest.” *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to work as a skydiving instructor in the United States. The Director concluded that while the Petitioner meets the second prong of the *Dhanasar* test by being well-positioned to advance his endeavor, he does not meet the first or third prongs of the *Dhanasar* test, and so is not eligible for a national interest waiver. On appeal, the Petitioner submits a brief and a copy of a previously-submitted business plan.

As an initial matter, we note that the record does not establish that the Petitioner qualifies for the EB-2 visa classification.³

A. Advanced Degree Professional

The regulation at 8 C.F.R. § 204.5(k)(1) states that an EB-2 visa petition may be filed on behalf of a noncitizen “who is a member of the professions holding an advanced degree.” The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as “one of the occupations listed in section 101(a)(32) of

¹ Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that “the term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ While the denial notice does not address the issue of whether the Petitioner qualifies for the EB-2 classification, the Director concluded in the prior request for evidence that the Petitioner qualifies as an advanced degree professional.

the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.”

In his Form I-140, Immigrant Petition for Alien Workers, Part 6, the Petitioner stated that he would work as a skydiving instructor, under the Standard Occupational Code (SOC Code) 25-3021, which is for “self-enrichment teachers.” According to the Department of Labor’s (DOL’s) *Occupational Outlook Handbook*, the typical entry-level education for self-enrichment teachers is a high school diploma or equivalent.⁴

The petition also contains documentation from the U.S. Parachute Association (USPA) regarding the requirements for licensure as a skydiving instructor. This documentation indicates that skydiving instructors must complete various jump experience requirements and pass a written examination, but does not state any degree requirement.

The record indicates that the occupation of skydiving instructor does not have a U.S. baccalaureate degree or a foreign equivalent as a minimum requirement for entry. Therefore, the Petitioner is not a member of the professions, as defined at 8 C.F.R. § 204.5(k)(1)-(2), and does not qualify as an advanced degree professional.

B. Individual of Exceptional Ability

A petitioner seeking to be classified as an individual of exceptional ability in the sciences, arts, or business must submit evidence that meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and establish that they have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Because the Director concluded in the RFE that the Petitioner qualifies as an advanced degree professional, the Director did not address whether the Petitioner qualifies as an individual of exceptional ability. Upon review of the evidence provided, we note that the record does not establish that the Petitioner is an individual of exceptional ability.

The Petitioner’s USPA license and skydiving instructor certifications meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), a license to practice the profession or certification for a particular profession or occupation. However, the evidence provided does not meet any of the other evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii).

To meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), the Petitioner must provide an official academic record showing that he has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to his area of exceptional ability. The Petitioner’s college degree in business administration does not relate to skydiving instruction, and so does not qualify for this criterion. The course completion certificates from [redacted] [redacted] are related to skydiving, but do not indicate that either of those organizations is an institution of learning. The Petitioner therefore has not met this criterion.

⁴ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail (Sep. 6, 2023), <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm>.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires employer letters showing that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought. The Petitioner provided a letter from [redacted] stating that he was employed as a tandem instructor, accelerated free fall instructor, ground safety coach, and air evaluator from January 10, 2011, to December 28, 2015, and from April 20, 2020, to November 17, 2021, or a total of six and a half years. He also provided a letter from [redacted] stating that he was employed as a parachute packer, ground safe students/radio control worker, and video editor from June 3, 2007, to December 20, 2010, or about three and a half years. This letter does not indicate that the Petitioner was employed as a skydiving instructor at [redacted] and it is not apparent that his duties, such as video editing, were “in the occupation” for which he is being sought. *Id.* This experience therefore does not qualify for this criterion. *Id.* Because the Petitioner’s qualifying employment at [redacted] only lasted six and a half years, he has not provided employer letters demonstrating that he has at least ten years of full-time experience in his occupation, as required for this criterion. *Id.*

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires evidence that the Petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. The Petitioner provided copies of his income tax returns and pay statements for this criterion, but did not provide any documentation regarding how his salary compares to that of other skydiving instructors. He therefore has not established that his salary or other remuneration was demonstrative of exceptional ability.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires evidence of membership in professional associations. As evidence for this criterion, the Petitioner submitted his membership information for the Confederação Brasileira de Paraquedismo (CBPQ) and the USPA, which are non-profit organizations that promote skydiving in Brazil and the United States, respectively. As noted above, the occupation of skydiving instructor does not require a baccalaureate degree for entry, and so is not a profession. *See* 8 C.F.R. § 204.5(k)(2). Furthermore, the record indicates that USPA membership only requires the payment of a fee, and is not limited to those in skydiving occupations.⁵ Therefore, the Petitioner has not established that either CBPQ or USPA qualifies as a professional association.

Finally, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. The record includes the Petitioner’s USPA certificates of achievement for reaching 132 hours of freefall and completing 9,000 jumps. First, we note that these certificates recognize the Petitioner’s achievements as a skydiver, not as a skydiving instructor. Furthermore, even if these certificates recognize an achievement in the Petitioner’s industry or field, they do not indicate that the Petitioner has made significant contributions to that industry or field, as required by regulation. *Id.* The Petitioner provided documentation regarding USPA service awards, which require a nomination and consideration by USPA’s board of directors and “are reserved for special USPA members whose contributions to the organization and the sport meet the criteria established by the award.”⁶ However, the Petitioner’s certificates are not USPA service awards, and are not judged by the USPA board of directors. Instead, these certificates are USPA achievement awards, which “provide a special kind of recognition to those . . . who have accumulated significant levels of

⁵ U.S. Parachute Assoc., *First-Time & Student Skydivers – FAQs*, <https://www.uspa.org/faqs> (expand the question “How can you become a member of USPA? Do you need to be a pro skydiver?”).

⁶ U.S. Parachute Assoc., *Skydiver’s Information Manual* at § 8-1.3, 2, <https://www.uspa.org/SIM-online>.

experience in both number of freefall skydives and amount of freefall time.”⁷ The evidence does not explain how accumulating a substantial amount of skydiving experience constitutes a significant contribution to the Petitioner’s field.

The peer recommendation letters from P-A-, the owner of [REDACTED], and M-C-, the president of the [REDACTED] in Brazil, speak highly of the Petitioner’s abilities, but do not specify any contribution he has made to the field of skydiving instruction apart from being a capable skydiver and teacher. For example, P-A- states that the Petitioner “left a legacy of teachings and techniques that have been used and continue to be used by our professionals,” but does not name any such teaching or technique or explain its significance to the field. Similarly, while J-C-L-, the owner of a parachute company, states that his company sponsored the Petitioner while he studied skydiving in the United States, he does not specify a significant contribution this sponsorship recognized. Finally, Professor A-J-R- is a professor of physical education and nutrition, and the Petitioner has not established that she is a peer, a governmental entity, or a professional or business organization, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The record, as currently constituted, does not meet at least three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner’s ineligibility for the EB-2 classification is normally a threshold issue which would also render him ineligible for a national interest waiver. However, since this issue was not one of the grounds of the Director’s denial, and the Petitioner has not had the opportunity to address it on appeal, we will therefore also examine his qualifications for a national interest waiver.⁸ 8 C.F.R. § 103.2(b)(16)(i) (stating that petitioners must be advised of derogatory information which is the basis of an adverse decision).

C. National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor will have national importance, we examine the specific impact of that endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* In this instance, the Director concluded that while the Petitioner’s endeavor has substantial merit, he did not submit sufficient evidence to establish that endeavor’s national impact.

On appeal, the Petitioner reiterates the claims made in the underlying petition, stating that his endeavor will have a national impact due to the health benefits of physical exercise and the national shortage of skydiving instructors. However, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.*

The Petitioner states that his proposed endeavor “consists of continue [*sic*] to advance my career in the U.S. as a Skydiving Instructor contributing to direct, produce, create, and make substantial

⁷ *Id.*

⁸ The Petitioner should address this evidentiary deficiency in any future filings.

contributions for the improvement of the Skydiving Industry in the United States.” He further states that he will “promote and advance the Skydiving field through knowledge, innovation, creativity, research, [and] counseling.” These statements do not establish the nature of the endeavor or what advancements or benefits the Petitioner proposes to provide to his field. *See generally* 6 USCIS Policy Manual, *supra*, at F.5(D)(1) (“The term ‘endeavor’ is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.”). The Petitioner’s business plan similarly does not include any specific information about the scope or aims of the Petitioner’s endeavor beyond simply working in the occupation of skydiving instruction.

We acknowledge the various materials provided regarding the national shortage of skydiving instructors. However, DOL directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

Similarly, we acknowledge the provided evidence about the health benefits of exercise activities such as skydiving. However, the general benefits of the Petitioner’s industry relate to the endeavor’s merit, not its national importance, which is a separate consideration under *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, the Petitioner’s work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* Similarly, the record here does not establish what specific impact the Petitioner’s endeavor would have on the broader field of skydiving instruction.

As noted above, the Petitioner’s support letters do not name any specific impact he has had on their organizations or their industry. Similarly, the Petitioner states that he intends to train other skydiving instructors in order to address the shortage of such workers, but includes no information about how many students he will teach, when or where he will do so, or any other information indicating how having one more skydiving instructor in the United States would impact the number of new skydiving instructors on a national level.⁹ Furthermore, the two letters from U.S. skydiving facilities which express an interest in hiring the Petitioner do not indicate that he will teach other instructors. While a national interest waiver petition does not require a job offer, it does require the Petitioner to submit relevant, probative, and credible evidence establishing that endeavor’s nature and impact. *See Matter of Chawathe*, 19 I&N Dec. at 376 (explaining the preponderance of the evidence standard used in these proceedings). The Petitioner has not done so here.

Finally, while the Petitioner’s support letters speak highly of his abilities, this documentation relates to the second *Dhanasar* prong regarding whether he is well-positioned to advance the proposed endeavor. It does not relate to that endeavor’s impact. The Petitioner has not provided documentation

⁹ We further note that the Petitioner is licensed as a USPA Coach, which is the entry-level instructional rating, and therefore is not qualified to train new skydiving instructors in the United States. U.S. Parachute Assoc., *Experienced Skydivers – Earning Licenses & Ratings*, <https://www.uspa.org/earning-licenses-ratings> (explaining the three USPA instructional ratings and stating that “Coaches can teach the general sections of the first-jump course and train and supervise students for group skydiving skills . . . under the supervision of instructors,” while those with the highest rating, Examiner, “train new coaches and instructors”). The Petitioner has not stated any plans to earn an Examiner rating.

of how his employment as a skydiving instructor, in and of itself, would have an impact extending beyond his immediate circle of students and employers to affect the broader field of skydiving instruction on a nationally important level. *Matter of Dhanasar*, 26 I&N Dec. at 889.

An endeavor may qualify under the first prong if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Id.* The Petitioner claims that his endeavor will aid the U.S. economy through unspecified “ripple effects” due to being a part of an economically valuable industry. However, as noted above, an endeavor’s national importance is determined by the impact that is specifically attributable to that endeavor, not the collective impact of the entire field that endeavor is in. *Id.* The Petitioner has provided no documentation quantifying any specific economic impact his individual endeavor will have. As such, he has not established that the endeavor will have the kinds of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* The record does not indicate that the Petitioner’s endeavor will have national importance.

Because the Petitioner has not established his eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the third prong and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.